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2009-426 W/S

October 9, 2009

Mr. Charles Terreni  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite #100  
Columbia, SC 29210

Re: Daufuskie Island Properties, LLC and CK Materials, LLC Request for Expedited Review and Approval of the Sale, Transfer of Stock, Assets and Operating Authority Of Melrose Utility Company, Inc. and Haig Point / Melrose Wastewater Treatment Company, Inc.

Dear Mr. Terreni:

Please be advised that the undersigned represents CK Materials, LLC ("CK"), a South Carolina limited liability company, in connection with the acquisition of the stock in Melrose Utility Company, Inc. ("MUC") and Haig Point / Melrose Wastewater Treatment Company, Inc. ("HPMWTC") owned by Daufuskie Island Properties, LLC ("DIP"), a South Carolina limited liability company. DIP filed for bankruptcy under Chapter 11 of the Federal Bankruptcy Act. The Stock Purchase Agreement for the transaction has been approved by the Bankruptcy Court with closing conditioned upon transfer or reissue of all required permits by the South Carolina Public Service Commission ("PSC") and the South Carolina Department of Health and Environmental Control ("DHEC").

Robert C. Onorato, as Trustee for the Chapter 11 bankruptcy estate of DIP and CK respectfully request the South Carolina Public Service Commission's expedited review and approval of the proposed sale of stock of MUC and HPMWTC and the transfer of relevant permits as described herein. In support of this request CK states as follows:

1. On or about January 20, 2009 DIP filed its petition for relief under Chapter 11 of the United States Bankruptcy Code.
2. On or about March 17, 2009 the United States Bankruptcy Court for the District of South Carolina approved the appointment of Robert C. Onorato as Trustee for DIP's bankruptcy estate.
3. All of the stock of MUC and 40% of the stock of HPMWTC are among the assets of DIP's

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COMMISSION  
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bankruptcy estate. CK currently owns the remaining 60% of the HPMWTC stock and is operating the wastewater treatment plant.

4. On or about September 24, 2009, the United States Bankruptcy Court for the District of South Carolina approved the terms of the Stock Purchase Agreement whereby CK will purchase from DIP all of DIP's ownership interest in MUC and HPMWTC. The Court's Order approving the sale is attached as Exhibit "A". The Stock Purchase Agreement is attached as Exhibit "B".

5. The closing of the Stock Purchase Agreement will result in CK having complete ownership of MUC and HPMWTC. CK previously acquired Haig Point Utilities, now known as Daufuskie Island Utility Company ("DIU") from a subsidiary of International Paper Co. in a transaction approved by your office in 2008.

6. The closing of the Stock Purchase Agreement will ultimately enable the unification of MUC, HPMWTC, and DIU due to the extent of common ownership of CK and DIU. This will allow for the unified company to continue to provide required services and expand its facilities and service on an economically feasible basis.

7. CK, by and through its officers, affiliates, and sub-contractors has experience in owning and operating a utility company providing the same type of service as MUC and HPMWTC.

8. CK is not requesting any utility rate changes at this time for MUC or HPMWTC.

9. The closing of the Stock Purchase Agreement is contingent upon the South Carolina Public Service Commission ("PSC") and the South Carolina Department of Health and Environmental Control ("DHEC") approving the sale and transfer of relevant permits to CK, including MUC's Operating Permit for a Public Water System and HPMWTC's wastewater and sewage operating permits.

10. DIP's Trustee believes that the uninterrupted continuation of water and sewage services is essential to finding a buyer of the remainder of the bankruptcy estate and avoiding hardship to current customers in the MUC service area.

11. On or about June 16, 2009 DHEC sent MUC a letter citing certain deficiencies MUC must correct. The bankrupt MUC currently lacks the funds to carry out the required corrections and improvements. If these deficiencies are not corrected then MUC's operating permit may be revoked by DHEC. DHEC's letter is attached as Exhibit "C".

12. Currently MUC is dependent upon services it obtains from DIU in order to provide its customers with service as MUC has neither employees of its own nor the ability to provide utility services without support from DIU. DIU is providing said services without payment to date, but cannot do this for an unlimited period of time.

13. There is a significant possibility that if the sale of MUC and HPMWTC is not completed before the close of DIP's bankruptcy estate the customers in the MUC service area will experience an interruption in utility services and be left without water, wastewater, and sewage services.

14. The purchase price of \$500,000 for the stock of MUC and HPMWTC is subject to certain provisions, these include:

- (i) the allocation of \$150,000 for improvements to the facilities and capital assets of MUC to restore such facilities to standards set by applicable government agencies such as DHEC; and
- (ii) the allocation of \$100,000 to cover the costs of DIU providing management, repair, and operating services to MUC through December 31, 2009.

15. CK is in the process of obtaining the performance bonds it will need for MUC and HPMWTC and will furnish the PSC with proof of these performance bonds once they are obtained.

16. CK will provide notice to the current customer's of MUC of the proposed transfer of MUC. CK would appreciate any model notice letter or language for such a letter that the PSC wishes to provide for this purpose.

CK, therefore, requests that the South Carolina Public Service Commission approve the Stock Purchase Agreement attached as **Exhibit "A"**, as well as the transfer of DHEC Operating Permits to CK from MUC and HPMWTC. CK further requests that PSC conduct its review and approval in an expeditious fashion so as to reduce any chance of an interruption of utility services for the customers of MUC and HPMWTC and the accompanying hardship.

**NOVIT & SCARMINACH, P.A.**  
*Attorneys at Law*

Mr. Charles Terreni  
October 9, 2009  
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If we may be of any further assistance or provide more information please contact us.

Yours very truly,

**NOVIT & SCARMINACH, P.A.**



Charles A. Scarminach

Enclosure

c: Duncan S. Teed, Esquire  
Mr. Jamie J. Karabinchak

## **EXHIBIT A**

**ENTERED**

SEP 24 2009

**K.R.W.**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**

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SEP 24 2009

United States Bankruptcy Court  
Columbia, South Carolina (26)

In re:

Daufuskie Island Properties, LLC aka  
Daufuskie Island Resort and Breathe Spa,

Debtor.

Case No. 09-00389-jw

Chapter 11

**COPY**

**ORDER AUTHORIZING SALE OF THE STOCK OF MELROSE UTILITY COMPANY, INC. AND THE STOCK OWNED BY THE ESTATE IN HAIG POINT/ MELROSE WASTEWATER TREATMENT COMPANY, INC. FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO 11 U.S.C. §§ 363(b)(1) and (f)**

This matter came before the Court upon the motion (the "Motion") of Robert C. Onorato, Trustee (the "Trustee") for the Chapter 11 bankruptcy estate (the "Estate") of Daufuskie Island Properties, LLC (the "Debtor"), for authorization to sell the stock of Melrose Utility Company, Inc. ("MUC") and the stock owned by the Estate in Haig Point/Melrose Wastewater Treatment Company, Inc. ("HPMWTC") (together, MUC and HPMWTC are referred to herein as the "Melrose Utility Entities") to CK Materials, LLC ("CKM") for a sale price of not less than \$500,000.00, paid and provided as set forth hereinbelow, free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§ 363(b)(1) and (f). The terms of the proposed sale are stated in the Stock Purchase Agreement attached as Exhibit A to the Motion. The Trustee filed the Motion on August 5, 2009, and following notice to creditors and parties in interest in the case, the Court held a hearing on the Motion on September 22, 2009.

Objections or responses to the Motion were filed by Beach First National Bank ("Beach First"), The Melrose Club, Inc. ("MCI"), the Official Committee of Unsecured Creditors (the "Committee") and William R. Dixon, Jr. and Gayle Bulls-Dixon (the "Dixons"). Beach First and

MCI withdrew their objections to the Motion at the commencement of the hearing, upon stipulations made by the Trustee, as set forth below, and the Committee withdrew its objection to the Motion at the conclusion of the presentation of evidence at the hearing, citing the Trustee stipulations, CKM's stipulations regarding the deposit of funds to cover capital improvements and perform remedial measures as required by applicable government agencies to restore the MUC facilities to the required standards for the maintenance and operation of MUC's business, and the evidence presented at the hearing. Accordingly, the only remaining objection to the Motion is the Dixons' objection.

At the hearing, the parties presented the testimony of three witness: the Trustee, Jamie J. Karabinchak, an officer of CKM, and Christopher J. Hutton, an officer of Hutton Bros., which submitted a competing offer to purchase the stock of MUC and the stock owned by the Estate in HPMWTC. The Dixons also presented a number of documents into evidence. Based upon the testimony of the witnesses, the documents in evidence, the Motion and supporting documents filed by the Trustee, the filings made by the other parties in this matter, the arguments of counsel, and the stipulations made at the hearing, the Court makes the following findings of fact and conclusions of law.<sup>1</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction and Venue**

1. The Trustee's motion seeks authorization for a sale and other relief pursuant to 11 U.S.C. §§ 363(b)(1), (f) and (m), and pursuant to Rule 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule 6004") and SC LBR 6004-1 of this Court.

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<sup>1</sup> To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent that any conclusions of law constitute findings of fact, they are so adopted.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b), and Local Civil Rule 83.IX.01 of the United States District Court for the District of South Carolina. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**B. Background**

4. On January 20, 2009 (the "Petition Date"), the Debtor filed its petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101, et seq.). The Debtor operated as the debtor-in-possession until the Trustee's appointment in this case.

5. On March 17, 2009, the Court entered its Order Granting Joint Motion for Appointment of Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104, granting the joint motion of the Official Committee of Unsecured Creditors (the "Committee"), Beach First National Bank and AFG, LLC for the appointment of a trustee in this case. Thereafter, on March 20, 2009, the Court entered its Order Approving Appointment of Trustee, approving the United States Trustee's appointment of Robert C. Onorato as Trustee for the Debtor's Chapter 11 estate.

6. The assets of the Estate include, but are not limited to, real property located on Daufuskie Island, South Carolina, with structures and improvements which include an inn (the "Melrose Inn"), cottages, duplexes, a beach club, two golf courses (the "Melrose Golf Course" and the "Bloody Point Golf Course"), tennis courts, a pool and other structures, improvements and fixtures. The Debtor's real property is generally separated into real property contained in the Melrose Planned Unit Development (the "Melrose Property") and real property contained in the Bloody Point Planned Unit Development (the "Bloody Point Property"; and together with the Melrose Property, the "Melrose and Bloody Point Properties"). The Melrose Golf Course, the Melrose Inn, the Melrose beach club and cottages are located on the Melrose Property. The



Bloody Point Golf Course, miscellaneous maintenance buildings and structures and unsold residential lots are located on the Bloody Point Property.

7. The assets of the Estate also include the stock of MUC, and stock of HPMWTC. The Estate owns all stock of MUC, and it owns 40% of the stock of HPMWTC. These companies provide water, wastewater treatment and sewer services to the Melrose and the Bloody Point Properties. The provision of these services is an important factor in the value of the Melrose and the Bloody Point Properties.

8. As utility providers, MUC and HPMWTC are subject to regulation by the State of South Carolina, by and through its agencies the South Carolina Public Service Commission ("SCPSC") and the South Carolina Department of Health and Environmental Control ("DHEC"). These agencies establish requirements applicable to the Melrose Utility Entities' business, which must be maintained for MUC and HPMWTC to continue operating their businesses.

9. In providing its services, MUC is currently dependent upon services it obtains from Daufuskie Island Utilities, Inc., f/k/a Haig Point Utility Company, Inc. ("DIU"). MUC has no employees, and the Trustee states that, upon his appointment, he found MUC's records to be in disarray and incomplete. At present, MUC does not have the ability on its own to provide the utility services to the Melrose and the Bloody Point Properties.

10. Following his appointment, the Trustee found MUC to be at risk of loss of its right and/or ability to continue operating its business. The Trustee states that he found several serious problems to exist for MUC, including: (a) MUC's cash had been taken by the Debtor and deposited into its bank account shortly before the Trustee's appointment, leaving MUC without funds to pay its bills; (b) DHEC cited MUC for deficiencies in MUC's operations and facilities, which, if not corrected, would result in MUC's losing its ability to operate; (c) MUC owes DIU substantial payables which MUC is unable to pay, and DIU indicated that it would

terminate its services to MUC unless it were soon paid; and (d) MUC lacked funds or capital with which to address these problems.

11. DHEC sent a letter dated June 16, 2009 to MUC citing the deficiencies that MUC must correct. DHEC resent the letter to the Trustee on or about July 16, 2009. A copy of the DHEC letter is attached to the Motion as Exhibit B.

12. The Trustee has negotiated and agreed, subject to the Court's authorization, to sell the stock of MUC and the stock the Estate owns of HPMWTC to CMK, in order to enable the continued and uninterrupted utility service to the Melrose and Bloody Point Properties, which is necessary to protect and maintain the value of these properties. The Trustee further states that the continuous and uninterrupted utility service is important to avoid delay and loss in the Trustee's marketing and sale of the property of the Estate.

**C. Summary of the Terms of the CKM Transaction**

13. The Stock Purchase Agreement attached as Exhibit A to the Motion provides the terms of the sale to CKM. The terms of the transaction are summarized as follows:

a. By its acquisition of the Melrose Utility Entities, CKM will acquire all assets owned by MUC, including (but not limited to) real property owned by MUC, all machinery and equipment, accounts receivable, inventory and supplies owned at closing.

b. The sale price is to be paid by, and consists of, the following: (1) CKM will assume and pay the outstanding payables owed by MUC to DIU, which the Trustee and Mr. Karabinchak state is presently in the approximate total amount of \$241,000.00, including amounts that have accrued subsequent to the filing of the Motion; (2) CKM will install and construct capital improvements and perform such other remedial measures as required by applicable government agencies to restore the facilities to required standards for the maintenance and operation of MUC's business, which capital expenditures are estimated in the amount of at

least \$150,000.00 (defined in the Stock Purchase Agreement as the "Restoration Costs"); (3) CKM will cover the costs for DIUC to provide management, repair and operating services to MUC for the period through December 31, 2009, which have been allocated a value of \$100,000.00; and (4) payment of \$20,000.00 in certified funds to the Estate, adjusted for pro-rations and Seller's costs under the Stock Purchase Agreement.

c. CMK's obligation to proceed with its purchase is contingent upon the necessary approvals of the SCPSC and DHEC and other pre-conditions to closing normal for bankruptcy sales, e.g., an order authorizing this sale under 11 U.S.C. §§ 363(b)(1) and (f) and providing for the protections of 11 U.S.C. § 363(m).

d. The closing of the sale shall take place on or before December 31, 2009, but not sooner than the issuance of the necessary SCPSC and DHEC approvals, which time can be extended by the agreement of the parties.

14. CKM intends to acquire the Melrose Utilities and transfer the ownership of them to JJK Utilities, which now owns 99% of the stock of DIUC. Mr. Karabinchak is also the President of DIUC, and he explained that the owners intend to unify the utility companies, by merger or common ownership, or by otherwise consolidating the businesses, and to recapitalize DIUC to position it to expand its facilities and the services it provides.

**D. The Trustee's Explanation of the CKM Transaction and Its Purposes**

15. The sale of MUC and the Estate's stock in HPMWTC to CMK will likely provide only a small amount of net cash for the Estate. In explanation of the reasons for the sale to CKM, the Trustee states that:

a. The sale of MUC and the Estate's stock in HPMWTC is necessary to assure continued and uninterrupted utility service to real property owned by the Estate in the Melrose and Bloody Properties.

b. MUC and HPMWTC provide water, water treatment and sewer services to the Melrose and Bloody Point Properties; these services are important to maintain the value of the Melrose and Bloody Point Properties, which include most of the property owned by the Estate; and the continued and uninterrupted provision of these utility services is important to the Trustee's timely sale of property of the Estate.

c. He presently has an offer for the purchase of substantially all of the property owned by the Estate; other potential purchasers of the property have been in contact with the Trustee; and he is informed and believes that the disruption of the utility service to the Melrose and Bloody Point Properties would jeopardize the successful sale of the properties, and would, at the least, result in delay in the sale process. He believes that the disruption in the utility service to the property would likely lead to a loss of value of the property of the Estate.

d. He is informed and believes that MUC is in danger of being closed by DHEC for certain deficiencies cited by DHEC, and pursuant to notice given by DHEC. MUC does not have the ability to remedy the deficiencies cited by DHEC absent an infusion of capital from an outside source.

e. MUC now owes approximately \$241,000.00 to DIU for services DIU provided to or on behalf of MUC, which MUC is unable to pay, and he is informed and believes that failure to make payment to DIU will result in the discontinuation of services needed to operate MUC's business.

f. MUC lacks the capital needed to operate its business through the end of this calendar year. To continue operating, MUC requires either an infusion of new capital or services provided to it on a non-cash payment basis.

g. The sale of the Melrose Utility Entities to CMK enables the Melrose Utility Entities to continue operation, and to avoid the disruption of utility service to the Melrose and Bloody Point Properties.

**E. Stipulations Made at the Hearing**

16. At the hearing, the Trustee resolved MCI's limited objection to the Motion by stipulating that authorization of the sale, and the consummation of the sale, will be without prejudice to any rights or interests MCI may have in the real property owned by MUC.

17. At the hearing, the Trustee and CKM both stipulated that CKM will deposit \$150,000.00 at the closing of the sale into the trust account of CKM's attorney, for use in covering the Restoration Costs.

18. At the hearing, CKM also stipulated that, if the actual Restoration Costs are less than the estimated \$150,000.00, the portion of the \$150,000.00 deposited into the trust account which is not needed to cover the Restoration Costs will be paid to the Estate.

**F. The Hutton Bros. Offer**

19. Hutton Bros. made an offer to the Trustee by a letter of intent, which it submitted at least twice to the Trustee. The Hutton Bros. offer states a total purchase price of \$1 million for the stock of MUC and the stock owned by the Estate in HPMWTC, with payments to be made over a period of five years. Upon acceptance, Hutton Bros. would pay a \$50,000.00 deposit to the Trustee, Hutton Bros. would have a thirty (30) day due diligence review period during which it could terminate the sale; if Hutton Bros. did not terminate the sale within the allowed due diligence period, the deposit would become non-refundable. Hutton Bros. would pay \$200,000.00 to the Estate at closing; it would then pay \$200,000.00 per year for the next three years, on the anniversary of the closing, and make a final payment of \$150,000.00 on the fourth anniversary of the closing. The offer provides, however, that after 24 months, Hutton

Bros. would have the right to adjust the payment schedule to the Estate to reflect the financial condition of the business.

20. Mr. Hutton testified that he questions whether the amount owed to DIUC is correct, and that the amount owed, if any, should be significantly lower. He testified that, if the amount owed to DIUC is greater than he believes should be correct, Hutton Bros.' purchase price would have to be reduced.

21. Neither Mr. Hutton nor Hutton Bros. has previously been through the process to obtain DHEC approval for a transfer in ownership of a utility. Neither Mr. Hutton nor Hutton Bros. has previously owned a utility company.

22. Hutton Bros. would hope to expand the utility service. Capital improvements for such expansion, or to address needs of the business, would be funded by requiring that the customer, such as the new owner of the Melrose and Bloody Point Properties, provide the funds for the expansion of facilities or other needed capital improvements. Hutton Bros. has no other planned source of funding to cover the capital expenditures.

23. Hutton Bros. needs an opportunity to review records and assess whether or not it would be willing and able to proceed with its offer. Mr. Hutton has reviewed the 2007 and 2008 operating records for the Melrose Utility Companies, and he is familiar with the physical assets owned by MUC, but Hutton Bros. is not willing to proceed with its purchase without further review and analysis of the operations of the business.

**G. The Dixons' Objection**

24. Although four objections or responses were filed to the Motion, all but one of the objections were withdrawn. The remaining objection is the objection of the Dixons.

25. The Dixons object to the proposed sale to CKM on the grounds that the offer by Hutton Bros. is better than the CKM offer and should be accepted in place of the CKM offer. The Dixons also argue that, even if the sale to Hutton Bros. is not authorized at this time, the Motion should be held in abeyance for at least thirty days to allow Hutton Bros. to review the MUC and HPMWTC records and then present an offer with more certainty as to amount and terms.

26. In support of their objection, the Dixons presented notices of tax liens filed against Mr. Karabinchak and against Karabinchak Bros., Inc. in New Jersey, relating to unpaid wage withholding taxes and pension benefits. The Dixons argue that the tax liens show that CKM's purchase of the Melrose Utility Entities would expose the Melrose Utility Entities to risk of inability to perform their services or to expand the services. However, Mr. Karabinchak testified that he owns only a portion of CKM and the entity to which the Melrose Utility Entities would be transferred, that Karabinchak Bros., Inc. is not involved in this transaction, and that he has been, and is, contesting the taxes assessed against him and Karabinchak Bros., Inc.

**H. Applicable Authority**

27. Pursuant to 11 U.S.C. § 363(b)(1), the Trustee may sell property other than in the ordinary course of business, upon notice and hearing. The proposed sale should be for good value and in the best interest of the Estate. See WBO Partnership v. Commonwealth of Virginia Department of Medical Assistance Services (In re WBO Partnership), 189 B.R. 97 (Bankr. E.D.Va. 1995). For a sale of property free and clear of liens, the Trustee may sell the property

free and clear if one or more of the requirements under 11 U.S.C. § 363(f) is met. In this case, these requirements are met.

**1. Section 363(b)(1) Authorization**

28. In reviewing a proposed sale of property of the bankruptcy estate, the courts “apply standards that, although stated variously [*sic.*] ways, represent essentially a business judgment test.” 3 Collier on Bankruptcy ¶ 363.02[1][f], at pages 363-14 and 363-15 (15<sup>th</sup> ed.rev. 6/2009). The proposed sale price must be fair and reasonable, WBQ Partnership, 189 B.R. at 104; however, “[a]lthough a trustee would normally be expected to sell to the highest bidder at an auction, there may be sound business reasons to accept a lower bid, particularly in a negotiated sale.” 3 Collier on Bankruptcy ¶ 363[1][f], at page 363-15. “For example, the payment terms may be more favorable, or the trustee may have substantial reason to doubt the ability of the higher bidder to raise the cash necessary to complete the purchase.” Id.; see also In re Long Point Road Limited Partnership, Case No. 93-72769-W, slip op. at 2-3 (Bankr. D.S.C. 6/5/1996).

29. In this case, the Trustee has presented good reasons for the sale. The sale is necessary to assure the continued, uninterrupted utility service to the property owned by the Estate, which is important to protect the value of the Estate’s property, and which is important to avoid delay and possible adverse effects on the Trustee’s efforts to sell the property. The Trustee is particularly concerned about the need to close the sale of the Melrose Utility Entities as a means of assuring the proposed purchaser of substantially all other assets of the Estate, and any other potential purchasers who might make competing offers for those assets, that the Melrose and Bloody Point Properties will have continued and appropriate water, wastewater and sewer services.



30. The Trustee also presented sound reasons for his proposed sale of the Melrose Utility Entities to CKM. These reasons include the following:

a. CKM has stated its intention to transfer the Melrose Utility Entities to another entity for unification with DIUC, and to then recapitalize the company to position it to expand its facilities and services, all of which the Trustee believes are important to prospective purchasers of the Melrose and Bloody Point Properties.

b. CKM, by and through its officers and affiliates, has experience in owning and operating a utility company providing the same type services provided by the Melrose Utility Companies, and in going through the DHEC process for approval of a transfer of ownership of such a utility company. Hutton Bros. does not have experience in these areas.

c. The sale to CKM will provide the funds to cover the Restoration Costs necessary to cure deficiencies cited by DHEC and to comply with applicable requirements for the maintenance and operation of MUC's business. CKM has agreed to deposit \$150,000.00, which is its estimation of the Restoration Costs, into its attorney's trust account at the closing of its purchase of the Melrose Utility Entities, to assure funding of the Restoration Costs.<sup>2</sup>

d. The sale to CKM will avoid the termination of services by DIUC to MUC and the disruption of MUC service to the Melrose and Bloody Point Properties. The sale to CKM will satisfy MUC's outstanding indebtedness to DIUC, and provide for continued services by DIUC to MUC pending SCPSC and DHEC approval of the transfer of ownership of MUC.

e. The sale to CMK is without contingencies, other than SCPSC and DHEC approval of the sale (which is required for the sale to occur) and entry of this Order.

f. The Trustee is informed and believes that the authorization for the sale to CKM will provide comfort to the prospective purchaser and other potential purchasers of the

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<sup>2</sup> At the hearing, CKM agreed that if the Restoration Costs are less than the estimated \$150,000.00, the amount of the \$150,000.00 deposit in excess of the Restoration Costs will be paid to the Estate.

Melrose and Bloody Point Properties that the utility services to those properties will continue without disruption and that proper provision has been made for expanded service capacity, as needed for the new owner of the Melrose and Bloody Point Properties to develop the approved development units on the properties.

g. The Trustee finds the Hutton Bros. offer to have too many uncertainties to accept. The offer is conditioned on a satisfactory due diligence review by Hutton Bros., which the Trustee asserts is a problem given the status of the DHEC matters and the pending motion for authorization of the sale of substantially all other assets; Hutton Bros. estimates a much lower total for the Restoration Costs, and it is not certain how Hutton Bros. would fund the Restoration Costs if they are at the level estimated by CMK; Hutton Bros. does not have a definite provision for the outstanding indebtedness of MUC to DIUC; Hutton Bros. has never owned a utility company, and it has never been through the process for approval by SCPSC and DHEC of the transfer of ownership of a utility company; the Hutton Bros. purchase price is to be paid over an extended period of time, which period of payment is to be adjusted if expenses are too high; and there is risk of disruption of MUC's services to the Melrose and Bloody Point Properties while waiting on resolution of these uncertainties.

31. MUC and the Estate do not have the ability to remedy the deficiencies cited by DHEC which jeopardize MUC's ability to operate. Likewise, MUC and the Estate do not have the ability to pay the indebtedness to DIU, to assure that DIU will continue to provide its services which are necessary for MUC's business operation, or to provide the working capital needed for operation of the business through the end of this year. The sale to CMK will enable MUC and HPMWTC to continue operating, and avoid the disruption of services to the Estate's property. Accordingly, the Trustee has shown that this sale is beneficial to and in the best interest of the Estate.

**2. Section 363(f) Authorization**

32. The sale of the stock to CKM is to be free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(f). Section 363(f) provides:

(f) The trustee may sell property under subsection (b) or (c) of section free and clear of any interest in such property of an entity other than the estate, only if -

- (1) applicable non-bankruptcy law permits such sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

33. In this case, the stock of MUC and HPMWTC owned by the Estate are subject only to the post-petition liens granted to Beach First National Bank and Tidelands Bank for the post-petition loans they made to the Estate under orders entered by this Court. The Trustee asserts that no other liens exist on the stock, and that no other enforceable interests are asserted on or in the stock owned by the Estate in MUC and HPMWTC. No creditor or party in interest has disputed this assertion, and there is no evidence before the Court indicating otherwise.

34. The Trustee seeks authorization for the sale to CMK under § 363(f)(2), upon the consent of the lienholders, Beach First National Bank and Tidelands Bank. Both of these lienholders consent to the sale. Accordingly, authorization is proper for the sale free and clear pursuant to § 363(f)(2).

**I. Conclusion**

35. The Trustee's proposed sale of the stock of MUC and HPMWTC owned by the Estate is proper and should be authorized under 11 U.S.C. §§ 363(b)(1) and (f). The Trustee should be authorized to sell the stock to CMK upon the terms stated in the Motion, as modified by the stipulations made by the Trustee and CMK at the hearing, free and clear of all liens,

claims, encumbrances and interests. In addition, upon the record in this matter, the Court finds that CMK is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m).

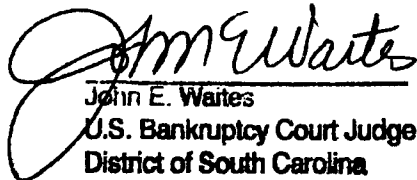
**THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that:

A. The Trustee is hereby authorized to sell the stock of MUC and the stock owned by the Estate in HPMWTC to CMK pursuant to the terms and provisions of the Stock Purchase Agreement attached as Exhibit A to the Motion, as modified by the stipulations made by the Trustee and CMK at the hearing, pursuant to 11 U.S.C. § 363(b)(1);

B. The transfer and conveyance of the ownership of the stock of MUC and the stock the Estate owns in HPMWTC shall be free and clear of all lien, claims and encumbrances pursuant to 11 U.S.C. § 363(f); and

C. In regard to its purchase of the stock of MUC and the stock owned by the Estate in HPMWTC, CMK is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m).

**AND IT IS SO ORDERED.**

  
John E. Waites  
U.S. Bankruptcy Court Judge  
District of South Carolina

9/24/09  
Date

## **EXHIBIT B**

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**STOCK PURCHASE AGREEMENT**

**BY AND BETWEEN**

**DAUFUSKIE ISLAND PROPERTIES, LLC**

**AND**

**CK MATERIALS, LLC**

**DATED AS OF \_\_\_\_\_**

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## STOCK PURCHASE AGREEMENT

**THIS STOCK PURCHASE AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 2009 (the “**Effective Date**”), is by and between **CK MATERIALS, LLC**, a South Carolina limited liability company or its assigns (“**Buyer**”), and **DAUFUSKIE ISLAND PROPERTIES, LLC**, a South Carolina limited liability company by **ROBERT C. ONORATO**, as Trustee (“**Trustee**”) for the Chapter 11 bankruptcy estate of Daufuskie Island Properties, LLC (“**Seller**”).

### W I T N E S S E T H :

**WHEREAS**, Seller directly owns certain capital stock in the entities comprising the Melrose Utility Entities as set forth on **Schedule 3.05(a)** and Real Property described on Schedule 3.13(a) (the “**Interests**”); and

**WHEREAS**, Seller desires to sell, and Buyer desires to purchase, the Interests, upon the terms and subject to the conditions set forth in this Agreement; and

**WHEREAS**, Seller has filed for protection under Chapter 11 of the U.S. Bankruptcy Act Code (11 U.S.C. §101 *et seq.*) in the United States Bankruptcy Court, District of South Carolina, Case No.: 09-00389 (the “**Court**”) and the Trustee has been duly appointed by the Court to manage the business and assets of the Seller;

**WHEREAS**, the Trustee has agreed to submit this Agreement to the Bankruptcy Court for approval by the Court. The date of the Order from the Court for said approval shall be the “**Effective Date**” of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, the parties hereto (each, a “**Party**” and collectively, the “**Parties**”) agree as follows:

### **ARTICLE I** **DEFINITIONS**

Section 1.01 Definitions. Capitalized terms used in this Agreement have the meanings set forth in this Agreement. In addition, for purposes of this Agreement, the following terms, when used in this Agreement, have the meanings assigned to them in this Section 1.01.

**“Affiliate”** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; *provided* that none of the Melrose Utility Entities shall be considered an Affiliate of Seller.

**“Business”** means the business conducted by the Melrose Utility Entities on the Effective Date with respect to the provision of water and wastewater treatment services.

**“Business Day”** means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in the town of Hilton Head Island, South Carolina.

**“Closing Date”** means the date of the Closing.

**“Code”** means the Internal Revenue Code of 1986, as amended, from time to time.

**“Combined Tax”** means any income, franchise or similar Tax and any property Tax payable to any state, local or foreign taxing jurisdiction in which any Melrose Utility Entity has filed or will file a Return with a member of the Seller Group on an affiliated, consolidated, combined or unitary basis with respect to such Tax.

**“Control”** as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of voting securities or otherwise.

**“Environmental Laws”** means all United States federal, state and local laws, rules and regulations, in existence as of the Closing Date, where the Business currently is conducted, any of which govern (or purport to govern) or relate to pollution, protection of the environment, Releases or threatened Releases of Hazardous Substances, solid or hazardous waste, as any of these terms are or may be defined in such statutes, laws, rules or regulations relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Substances and all laws and regulations with regard to record keeping, notification, disclosure and reporting requirements respecting Hazardous Substances.

**“Environmental Permit”** means any permit, approval, identification number, license or other authorization required under any applicable Environmental Law.

**“Federal Tax”** means any Tax imposed under Subtitle A of the Code with respect to which MUC has filed or will file a Return with a member of the Seller Group on a consolidated basis.



**“Final Determination”** means (i) any final determination of liability in respect of a Tax that, under applicable law, is not subject to further appeal, review or modification through proceedings or otherwise (including the expiration of a statute of limitations or a period for the filing of claims for refunds, amended returns or appeals from adverse determinations), including a “determination” as defined in Section 1313(a) of the Code or execution of an Internal Revenue Service Form 870AD or (ii) the payment of Tax by Buyer, Seller or any of their respective Affiliates, whichever is responsible for payment of such Tax under applicable law, with respect to any item disallowed or adjusted by a Taxing Authority; *provided* that such responsible party determines that no action should be taken to recoup such payment and the other party agrees.

**“GAAP”** means United States generally accepted accounting principles as in effect on the Effective Date.

**“Governmental Authority”** means any supranational, national, regional, state, local, municipal, other governmental or regulatory authority, administrative body or government, department, board, body, instrumentality, commission, court or other judicial authority.

**“Hazardous Substance.”** means any chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “hazardous constituents”, “restricted hazardous materials”, “extremely hazardous substances”, “toxic substances”, “contaminants”, “pollutants”, “toxic pollutants”, or words of similar meaning and regulatory effect under any applicable Environmental Law.

**“Haig Point”** means Daufuskie Island Utility Company, Inc. (formerly known as Haig Point Utility Company, Inc.).

**“HPMWTC”** means Haig Point / Melrose Wastewater Treatment Company, Inc., a South Carolina corporation.

**“Income Taxes.”** means all Taxes based upon, measured by, or calculated with respect to (a) gross or net income or gross or net receipts of profits (including any capital gains, minimum taxes and any Taxes on items of tax preference, but not including sales, use, goods and services, real or personal property transfer or other similar Taxes), (b) multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based upon, measured by, or calculated with respect to, is described in (a) above, or (c) withholding taxes measured by, or calculated with respect to, any payments or distributions (other than wages).

**“Knowledge of”** means the actual knowledge of the Trustee and/or any employee, agent or attorney of the Trustee.

**“Lien”** means any mortgage, pledge, lien (statutory or otherwise and including environmental and tax liens), security interest, easement, right of way, limitation, encroachment, covenant, claim, restriction, right, option, conditional sale or other title retention agreement, charge or encumbrance of any kind or nature (except for any restrictions arising under any applicable securities laws).

**“Material Adverse Effect”** means a material adverse effect on the business, results of operations, properties, assets or financial condition of the Business, taken as a whole, other than any event, change or effect resulting from, relating to or arising out of (a) the announcement of the execution of this Agreement and the transactions contemplated hereby, including by reason of the identity of Buyer or communication by Buyer of its plans or intentions regarding operation of the Melrose Utility Entities or the Business, (b) any action taken by Seller or Buyer or any of their respective representatives pursuant to the terms of this Agreement or necessary to consummate the transactions contemplated by this Agreement, (c) any actions taken, or failures to take action, or such other changes or events, in each case, to which Buyer has consented, (d) any change in law, rule or regulation or GAAP or interpretations thereof applicable to the Melrose Utility Entities, Seller or Buyer, (e) acts of God, national or international political or social conditions, including the engagement by any nation or Person in hostilities, whether commenced before or after the Effective Date, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, (f) general economic conditions in any of the geographic areas in which the Melrose Utility Entities operate, (g) changes or events affecting the financial, banking, currency or capital markets in general (whether in the United States or any other country or in any international market), (h) changes or events affecting the industry and markets in which the Melrose Utility Entities generally operate, (i) increases in water, energy, electricity, natural gas, raw materials or other operating costs or (j) any matter of which the Buyer or its representatives has actual knowledge on the Effective Date.

**“Melrose Utility Entities”** means HPMWTC and MUC.

**“MUC”** means Melrose Utility Company, Inc., a South Carolina corporation.

**“Permits”** means permits, licenses, variances, exemptions, orders, approvals, authorizations, certificates, franchises, qualifications, registrations, consents, notices and rights.

**“Permitted Encumbrances”** means (i) restrictive covenants, easements, reservations, and other rights of others in, or minor defects and irregularities in title that do not materially impair the use of, the encumbered property or assets for the purposes for which they are held; (ii) any restrictions imposed by any law; (iii) standard printed exceptions as may be shown in a current title policy for the Real Property; (iv) any encumbrance or privilege vested in any lessor or licensor for rent or other obligations solely related to the period after the Closing; (v) licenses of or other grants of rights to use intellectual property entered into in the ordinary course of business that do not materially impair the conduct of the Business; (vi) encumbrances, title exceptions, or other imperfections of title caused by or resulting from the acts of Buyer or any of its affiliates, employees, officers, directors, agents, contractors, invitees, or licensees; (vii) liens

for Taxes not yet due and payable; (viii) municipal and zoning ordinances and any agreements entered under them; and (ix) encumbrances set forth on **Schedule 3.05(b)**.

**“Person”** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Post-Closing Tax Period”** means any Tax period beginning after the Closing Date and the portion of any Straddle Period occurring after the Closing Date.

**“Pre-Closing Tax Period”** means any Tax period ending on or prior to the Closing Date and the portion of any Straddle Period occurring on or prior to the Closing Date.

**“Real Property”** means the real property listed by address on **Schedule 3.13(a)** owned by any Melrose Utility Entity and/or the Seller and used in the Business.

**“Release”** means any spill, emission, discharge, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, release, presence or migration of Hazardous Substances in or into the environment above regulatory standards or into or out of any property.

**“Seller Group”** means, with respect to federal and foreign Income Taxes, the affiliated group of corporations (as defined in Section 1504(a) of the Code and any similar provision of foreign law) of which Seller is a member and, with respect to state income, property or franchise Taxes, the consolidated, combined or unitary group of which Seller or any of its Affiliates is a member.

**“Solvent”** with regard to any Person, means that (a) the sum of the assets of such Person, both at a fair valuation and at present fair salable value, exceeds its liabilities, including contingent, subordinated, unmatured, unliquidated, and disputed liabilities, (b) such Person has sufficient capital with which to conduct its business, and (c) such Person has not incurred debts, and does not intend to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, **“debt”** means any liability on a claim, and **“claim”** means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. With respect to any such contingent liabilities, such liabilities shall be computed at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

**“Stockholders Agreement”** means that certain Stockholders Agreement by and among Haig Point/Melrose Wastewater Treatment Company, Inc., a South Carolina corporation, Haig Point, Inc. (f/k/a International Paper Realty Corporation of South Carolina) and Seller.

**“Straddle Period”** means any taxable year or period beginning on or before and ending after the Closing Date.

**“Subsidiary”** means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time, directly or indirectly, owned by such Person.

**“Tax”** means (a) any tax, governmental fee or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by a Taxing Authority, and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being included as a member of an affiliated, consolidated or combined group with any other corporation.

**“Tax Asset”** means any net operating loss, net capital loss, investment tax credit, foreign tax credit, charitable deduction or any other credit or tax attribute that could be carried forward or back to reduce Taxes (including deductions and credits related to alternative minimum Taxes) and losses or deductions deferred by the Code or other applicable law (including pursuant to Section 163(e)(3) or 163(j) of the Code).

**“Taxing Authority”** means any Governmental Authority responsible for the imposition of any Tax.

**“Utility & Water Laws”** means (a) all United States federal, state and local laws, rules and regulations, in existence as of the Closing Date, where the Business currently is conducted, any of which govern (or purport to govern) or relate to the ownership, operations, safety, engineering standards, recordkeeping, accounting or billing functions, ratemaking or customer relations of any public or private utility, (b) Environmental Laws, and (c) all United States federal, state and local laws, rules and regulations, in existence as of the Closing Date, where the Business currently is conducted, any of which govern (or purport to govern) or relate to water withdrawal, use, treatment, storage or discharge.

## **ARTICLE II PURCHASE AND SALE**

Section 2.01 Sale of the Interests. The closing (the **“Closing”**) of the purchase and sale of the Interests and the consummation of the other transactions contemplated hereby shall take

place at the offices of Novit & Scarminach, P.A., The Jade Building, Suite 400, 52 New Orleans Road, Hilton Head, South Carolina 29928 on or before December 31, 2009 or as extended pursuant to Section 12.01 hereof. At the Closing and subject to the terms and conditions set forth in this Agreement, Seller will sell, assign and transfer to Buyer all of Seller's right, title and interest in and to the Interests, free and clear of any Liens other than Permitted Encumbrances.

Section 2.02 The Purchase Price. Upon the terms, and subject to the satisfaction or, if permissible, waiver, of the conditions of this Agreement, in consideration of the aforesaid sale, assignment, transfer and delivery to Buyer of the Interests, at the Closing, Buyer shall pay or cause to be paid in full to Seller:

(a) Not less than Five Hundred Thousand No/100 Dollars (\$500,000.00) as herein provided, (the "**Purchase Price**"), payable as follows;

(i) Assumption and/or satisfaction of all accounts payable to Haig Point, HPMWTC, and the Buyer from the Melrose Utility Entities (the "**Utilities Accounts Payable**") currently outstanding and accruing through the date of Closing from MUC. As of June 30, 2009 the balance thereof is One Hundred Ninety-Six Thousand (\$196,000.00) Dollars. All new accounts payable to Haig Point and HPMWTC from the Melrose Utility Entities shall be added to this amount. In the event of termination of this Agreement for any reason prior to Closing, the Utilities Accounts Payable shall be due and payable by MUC in accordance with their terms ; and

(ii) The construction and/or installation of capital improvements to facilities of the Melrose Utility Entities necessary to restore said facilities to standards required by Governmental Authority in the amount of One Hundred Fifty Thousand and NO/100 (\$150,000.00) Dollars on a cost basis to include labor and all materials by the Buyer ("**Restoration Costs**") subject to mutual agreement of the Buyer and the Trustee as to improvements made and cost allocated therefore;

(iii) Twenty Thousand and NO/100 (\$20,000.00) Dollars in certified funds adjusted for pro-rations and Sellers costs as herein provided; and

(iv) The balance of the Purchase Price, which is estimated to be in the approximate amount of One Hundred Fifty Thousand and NO/100 (\$150,000.00) Dollars shall be allocated to Buyer's management of the operation of the Melrose Utility Entities facilities (the "**Management Fees**") at no additional cost to the Seller until Closing or termination prior to Closing. In the event termination of the Agreement, prior to Closing for any reason, Buyer shall be reimbursed for said Management Fees to the extent and for the period actually provided. If the Agreement is terminated prior to closing, Buyer shall not be required to continue

to provide said management services unless otherwise agreed, in writing, by the Buyer. Upon approval of this Agreement, the Trustee and the Buyer shall enter into a mutually Management Agreement which shall describe Buyer's services.

(b) The Purchase Price shall be allocated among the Interests as agreed to by the parties prior to Closing. Seller and Buyer shall (i) be bound by the allocations for purposes of determining any Taxes, (ii) prepare and file all Returns in a manner consistent with such allocations, and (iii) take no position inconsistent with such allocations in any Return, any proceeding before any Taxing Authority or otherwise. In the event any of such allocations is disputed by any Taxing Authority, the Party receiving notice of such dispute shall promptly notify and consult with the other Party concerning resolution of such dispute.

Section 2.03 Inspection Period. During the period prior to closing (the "Inspection Period"), Buyer shall be entitled to perform the inspections in accordance with Section 5.02 of this Agreement.

(a) Indemnification. Buyer agrees to keep the Real Property free from all Liens and to indemnify, defend and hold harmless Seller and Trustee from and against all damages, loss, charges, judgments, penalties, fines, costs, liability, fees and expenses (including expenses of investigation or remediation, any consulting or engineering fees in connection with any action, suit or proceeding, incurred or suffered by Seller by reason of any damage to the Real Property or injury to Persons caused by Buyer and/or any of its Affiliates, agents, contractors or other representatives exercising the rights of Buyer under this Section 2.03 or Section 5.02 of this Agreement. The indemnity provided pursuant to this Section 2.03(a) shall survive the Closing and any termination of this Agreement.

(b) Termination Prior to Closing. Buyer may terminate this Agreement by means of written notice thereof to the Trustee without liability only if SCPSC, SCDHEC or any other applicable Governmental Authority has affirmatively denied a Required Approval and such denial is not subject to appeal or default by Seller or Trustee hereunder.

(c) Effect of Termination Prior. If Buyer properly terminates this Agreement pursuant to Section 2.03(b) and Buyer is not then in breach of any of its obligations under this Agreement, Buyer shall be deemed to have thereby waived all right, title and interest in and to the Interests, the Melrose Utility Entities, the Business, the Real Property and all other assets which may be conveyed under this Agreement, whereupon the parties thereafter shall have no further rights, liabilities or obligations under this Agreement except as otherwise provided in this Agreement Buyer shall be entitled, however, to reimbursement for Management Fees and Restoration Costs expended prior to termination.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER/TRUSTEE

Except as disclosed in any disclosure schedules contained in any separate disclosure letters, delivered by Trustee to Buyer (the “**Disclosure Schedules**”), Trustee, on behalf of Seller represents and warrants to Buyer as follows:

Section 3.01 Existence and Power. To the Knowledge of the Trustee, each of Seller and the Melrose Utility Entities is a corporation or limited liability company duly organized, validly existing and, to the extent relevant in its jurisdiction of incorporation, in good standing under the laws of its jurisdiction of incorporation or organization and has all corporate powers required to carry on its business as now conducted.

Section 3.02 Authorization. The execution, delivery and performance by Trustee of this Agreement, and the consummation of the transactions contemplated hereby and thereby, shall be approved by the Court. Assuming the foregoing Court approval and the valid execution and delivery by all parties thereto, this Agreement constitutes a valid and binding agreement of Seller, in each case enforceable in accordance with its respective terms.

Section 3.03 Governmental Authorization. The execution, delivery and performance by Trustee of this Agreement, and the consummation of the transactions contemplated hereby and thereby, require no action by or in respect of, or filing with, any Governmental Authority, other than (a) approval by the Court, (b) compliance with any applicable requirements of any Utility & Water Laws, (c) the Required Approvals (as defined in Section 7.02(b) of this Agreement), and (d) any such action or filing as to which the failure to make or obtain would not have, individually or in the aggregate, a Material Adverse Effect.

Section 3.04 Noncontravention. To the knowledge of the Trustee the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby and thereby, do not and will not, violate the organizational documents of Seller or any of the Melrose Utility Entities.

Section 3.05 Capitalization.

(a) **Schedule 3.05(a)** sets forth, as of the Effective Date, a list of the Melrose Utility Entities, including, for each, its name, its jurisdiction of incorporation or formation, its authorized and outstanding capital stock, and the percentage of its outstanding capital stock owned by Seller.

(b) To the Knowledge of the Seller the Interests have been duly authorized and validly issued and are fully paid and non-assessable and are held of record by Seller, free and clear of any Liens other than Permitted Encumbrances. To the knowledge of the Trustee there are no outstanding (i) obligations, options, warrants, convertible securities, exchangeable securities or other rights, agreements or other commitments relating to the capital stock or membership interest of the Melrose Utility Entities other than the liens granted by the Court to Beach First National Bank and Tidelands Bank for the post-petition loans made to the Trustee in the Seller’s Chapter 11 case, or obligating the

Melrose Utility Entities to issue or sell or otherwise transfer shares of capital stock of the Melrose Utility Entities or any securities convertible into or exchangeable for any shares of capital stock or membership interest of the Melrose Utility Entities, (ii) obligations of any of the Melrose Utility Entities to repurchase, redeem or otherwise acquire any outstanding securities or membership interests of any of the Melrose Utility Entities or to make any investment (in the form of a loan, capital contribution or otherwise) in any other Person or (iii) voting trusts, proxies, or other agreements or understandings with respect to the voting of the capital stock or membership interest of the Melrose Utility Entities.

Section 3.06 Compliance with Laws and Court Orders. To the Knowledge of the Trustee, none of the Melrose Utility Entities is in violation of any applicable law, rule, regulation, judgment, injunction, order, decree or Permit, except for violations that do not have, individually or in the aggregate, a Material Adverse Effect.

Section 3.07 Certain Properties To the Knowledge of the Trustee, the Melrose Utility Entities have good title to, or in the case of any leased property and assets, have valid leasehold interests in, all property and assets normally used in connection with the Business, except where the failure to have such good title or valid leasehold interests would not have, either individually or in the aggregate, a Material Adverse Effect. None of such property or assets is subject to any Lien other than Permitted Encumbrances.

Section 3.08 Employees. **Schedule 3.10** sets forth a true and complete list of the titles and annual salaries of all employees of the Melrose Utility Entities.

Section 3.09 Environmental Matters. To the Knowledge of the Trustee:

(a) Each of the Melrose Utility Entities is in material compliance with all Environmental Laws applicable to it in the conduct of the Business, except for any non-compliance which would not, individually or in the aggregate, have a Material Adverse Effect; provided, however, that there are matters that require remedial action by MUC as set forth in the letter from the South Carolina Department of Health and Environmental Control originally dated June 16, 2009 and resent July 16, 2009, a copy of which the Trustee has provided to Buyer;

(b) There has been no Release (except for Releases in accordance with Environmental Permits) of any Hazardous Substances at any of the Real Property, the condition of which remains uncured, and which requires remedial action pursuant to any Environmental Laws, except for Releases that would not, individually or in the aggregate, have a Material Adverse Effect; and

(c) No Melrose Utility Entity has received written notice of, and no Melrose Utility Entity is the subject of, any actions, causes of action, claims, investigations, demands or notices by any Person alleging liability under or noncompliance with any Environmental Law relating to the Real Property or the Business.

Section 3.10 Real Property.



(a) To the Knowledge of the Trustee, each applicable Melrose Utility Entity has fee simple title to its Real Property(ies) listed in **Schedule 3.13(a)**.

(b) Trustee shall convey to Buyer and include in the description of Real Property all of the real property owned, and Seller's interest in all real property leased or occupied, in connection with the Business. To the knowledge of Trustee, there are no outstanding agreements, options, rights of first offer or rights of first refusal to purchase any of the Real Property. To the Knowledge of the Trustee, there is no pending or threatened condemnation proceeding affecting any Real Property that is material to the Business.

Section 3.11 Taxation. Trustee shall use its best efforts prior to Closing to confirm to Buyer that, (a) all Tax returns, statements, reports and forms (collectively, the "**Returns**") that are material and required to be filed with any Taxing Authority on or before the Closing Date with respect to any Pre-Closing Tax Period by, or with respect to, any Melrose Utility Entity have been, or will be, timely filed on or before the Closing Date, (b) the Melrose Utility Entities have timely paid all Taxes shown as due and payable on the Returns that have been filed, (c) the Returns that have been filed are true, correct and complete in all material respects at the time such Returns were filed, and (d) there is no action, suit, proceeding, investigation, audit or claim now proposed or pending against or with respect to any of the Returns the unfavorable resolution of which would have, individually or in the aggregate, a Material Adverse Effect.

Section 3.12 Brokers. There is no investment banker, broker, finder or other intermediary which has been retained by, or authorized to act on behalf of, Seller or any of its respective Affiliates who is entitled to any fee or commission in connection with the consummation of the transactions contemplated by this Agreement.

Section 3.13 Personal Property. Upon approval of this Agreement by the Court, the Trustee shall provide to Buyer a complete list of the material tangible personal property owned by the Melrose Utility Entities and used by the Melrose Utility Entities to operate the Business.

Section 3.14 Contracts. Upon approval of this Agreement by the Court, the Trustee shall provide to Buyer a true and complete list of the material contracts to which the Melrose Utility Entities or any one of them is a party.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Trustee as follows:

Section 4.01 Existence and Power. Buyer is duly organized, validly existing and in good standing under the laws of the State of South Carolina and has all organizational powers required to carry on its business as now conducted.

Section 4.02 Authorization. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the organizational powers of Buyer and have been duly authorized by all necessary organizational action on the part of Buyer. Assuming the valid execution and delivery by all

counterparties thereto, each of this Agreement constitutes a valid and binding agreement of Buyer, in each case enforceable against Buyer in accordance with its respective terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 4.03 Governmental Authorization. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority, other than (a) compliance with any Utility & Water Laws and (b) any such action or filing as to which the failure to make or obtain would not adversely affect the ability of, or timing for, Buyer to consummate the transactions contemplated by this Agreement.

Section 4.04 Noncontravention. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby do not and will not, violate the organizational documents of Buyer.

Section 4.05 Solvency. As of the Closing, assuming satisfaction or, if permissible, waiver of the conditions of this Agreement, and after giving effect to the transactions contemplated by this Agreement, including the payment of the Purchase Price and all costs, fees and expenses necessary to consummate the transactions contemplated by this Agreement, Buyer will be Solvent.

Section 4.06 Brokers. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer or any of its respective Affiliates who is entitled to any fee or commission in connection with the consummation of the transactions contemplated by this Agreement.

## **ARTICLE V COVENANTS OF SELLER**

Section 5.01 Conduct of the Melrose Utility Entities. During the period from the Effective Date until the Closing, except as contemplated by this Agreement or consented to by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall use commercially reasonable efforts to cause each of the Melrose Utility Entities to conduct its businesses in the ordinary course of business consistent with past practices.

Section 5.02 Access to Information.

Between the Effective Date and the Closing, Trustee shall, and shall cause the Melrose Utility Entities to, subject to applicable law and any applicable restrictions as to confidentiality, (i) give Buyer and its authorized representatives reasonable access to books, records, offices and other facilities and properties of the Melrose Utility Entities as Buyer may reasonably request, (ii) permit Buyer and its authorized representatives to make such inspections thereof as Buyer may reasonably request (except that Buyer and its representatives shall specifically be prohibited from conducting any environmental testing at any property of the Melrose Utility Entities), and (iii) furnish Buyer and its authorized representatives with such existing financial and operating data and other

information with respect to the Melrose Utility Entities as Buyer may from time to time reasonably request; provided, however, that (A) any such access shall be provided after reasonable notice during normal business hours under the supervision of Trustee's designated personnel or representatives and in such a manner as to not interfere unreasonably with the operations of the Business or the other businesses of Trustee or its Affiliates, and (B) none of Trustee, the Melrose Utility Entities or any of their Affiliates shall be required to provide to Buyer access to or copies of any documents or to disclose any information from individual personnel records with respect to any employee, other than name, service dates, current base compensation, accrued but unused vacation, and the amount of deductibles or co-payment amounts for applicable benefits. Buyer shall coordinate all such access with an employee or representative of Trustee who will be identified to Buyer promptly after the execution of this Agreement, and shall not directly or indirectly contact any other employee of Seller, the Melrose Utility Entities or any of their Affiliates without the prior approval of such designated employee or representative.

**Section 5.03 Notices of Certain Events.** Between the Effective Date and the Closing Date, Trustee shall promptly notify Buyer of:

- (a) any notice delivered to Trustee, Seller, its Affiliates or the Melrose Utility Entities from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
- (b) any notice delivered to Trustee, Seller, its Affiliates or the Melrose Utility Entities from any Governmental Authority in connection with the transactions contemplated by this Agreement; and
- (c) any actions, suits, claims, investigations or proceedings commenced relating to Seller, its Affiliates or any of the Melrose Utility Entities.

**Section 5.04 FIRPTA Certificate; Owner's Affidavit.** On or prior to the Closing Date, Trustee shall deliver to Buyer (a) a certificate of Seller's non-foreign status which complies with the requirements of Section 1445 of the Code and (b) an owner's affidavit in the form attached hereto as **Exhibit "A"**.

**Section 5.05 Intercompany Accounts.** Prior to the Closing, Trustee shall settle all intercompany accounts payable and accounts receivable, other than intercompany payables or receivables that will be settled following the Closing in the ordinary course of business consistent with past practice. Trustee shall determine the method by which such intercompany accounts are eliminated including by means of setoff, settlement or capital contribution; however, it is understood by the Parties that the Trustee may be precluded from making cash payment of intercompany accounts by applicable provisions of the U.S. Bankruptcy Code. Notwithstanding the foregoing, Buyer shall not be responsible for any intercompany debt of any Melrose Utility Entity at Closing or post-closing.

**Section 5.06 Accounts Payable; Accounts Receivable.** Upon approval of this Agreement by the Court, the Trustee shall deliver to Buyer a schedule of the accounts receivable and accounts payable for the Melrose Utility Entities. Such schedule shall be true and complete

as of the date noted thereon. Except as otherwise herein provided, Buyer shall not be responsible for or assume any accounts payable of the Seller or any of the Melrose Utility Entities. All accounts receivable existing as of the date of Closing of MUC shall be included with the property transferred to Seller hereunder.

## **ARTICLE VI COVENANTS OF BUYER**

Section 6.01 Confidentiality; Access. All information concerning the Melrose Utility Entities that is furnished or provided to (or is developed or is based upon, in whole or in part, any such information that was furnished or provided to) Buyer, its Affiliates or any of their respective officers, directors, employees, accountants, counsel, consultants, advisors, agents or other representatives (whether furnished before or after the Effective Date, pursuant to this Agreement shall not be disclosed to any third party other than Buyer's counsel, financial advisors, and lenders, if any. If this Agreement is terminated, Buyer and its Affiliates will, and will cause their respective officers, directors, employees, accountants, counsel, consultants, advisors, agents or other representatives to, destroy or deliver to Seller all documents and other materials, and all copies thereof, obtained by Buyer or its Affiliates or on their behalf from Seller or its Affiliates (or which was developed or based upon, in whole or in part, any such information) in connection with this Agreement.

Section 6.02 Release of Guarantees. Prior to the Closing, Buyer shall use its reasonable best efforts to either (a) arrange for substitute letters of credit, guarantees and other obligations on commercially reasonable terms to replace in all respects the indemnities, performance bonds, performance guarantees, other guaranty obligations, letters of credit and other similar arrangements of Seller or its Affiliates, which may be currently in existence (collectively, the **"Released Parties"**) in favor of any third parties with respect to obligations of the Melrose Utility Entities (collectively, **"Guarantees"**) or (b) assume all obligations under each such Guarantee, obtaining from the creditor or other counterparty a full release of the Released Parties. Seller shall provide Buyer a true and accurate list of such Guarantees as soon as reasonably possible after execution of this Agreement and approval, thereof, by the Court.

## **ARTICLE VII COVENANTS OF BUYER AND SELLER/TRUSTEE**

Section 7.01 Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the Parties shall use its reasonable best efforts to take, or cause to be taken, all appropriate actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable including (i) Trustee obtaining order of approval of this Agreement from the Court, (ii) the preparation and filing of all forms, registrations and notices required to be filed to consummate the transactions contemplated by this Agreement and the taking of such actions as are necessary to obtain any requisite approvals, consents, orders, exemptions or waivers by any third party or Governmental Authority, including submission of a request that Haig

Point waive its right of first refusal set forth in the Stockholders Agreement, and (iii) using its reasonable best efforts to cause the satisfaction of all conditions to Closing. Each Party shall promptly consult with the other with respect to, provide any necessary information with respect to, and provide copies of all filings made by such Party with any Governmental Authority or any other information supplied by such Party to a Governmental Authority in connection with this Agreement and the transactions contemplated hereby.

(b) Notwithstanding the obligation of the Parties to use their reasonable best efforts as set forth in Section 7.01(a) above, it is understood by the Parties that under the applicable process for obtaining approval by the Court of this Agreement, (i) Trustee has a duty and is required to attempt to obtain the highest and/or best value for Seller's bankruptcy estate for Seller's assets, (ii) Trustee's motion for approval of the transactions to occur under the Agreement will be subject to higher and/or better offers by other potential buyers, and (iii) this approval process may require that Trustee review and assess, and, where appropriate, recommend approval of other offers for Seller's assets.

(c) Each Party shall promptly inform the other of any communication from any Governmental Authority regarding any of the transactions contemplated by this Agreement. If any Party or Affiliate thereof receives a request for additional information or documentary material from any such Governmental Authority with respect to the transactions contemplated by this Agreement, then such Party shall use its reasonable best efforts to make, or cause to be made, as soon as practicable and after consultation with the other Party, an appropriate response in compliance with such request.

#### Section 7.02 Regulatory Consents and Approvals.

(a) Without limiting the generality of the undertakings set forth in Section 7.01, each party at their own expense shall use its reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary under all Utility & Water Laws to consummate and make effective the transactions contemplated by this Agreement, including furnishing all information required by applicable law in connection with approvals of or filings with any Governmental Authorities.

(b) In furtherance of the covenants in Section 7.02(a), as soon as reasonably possible after approval by the Court, Buyer, with assistance and approval of the Trustee, shall deliver all applications, petitions, modification requests, requests for approval, notifications, or other documentation required to obtain the approvals and Permits necessary to complete the acquisition of the Melrose Utility Entities and the other transactions contemplated by this Agreement (collectively, the "**Required Approvals**") to the South Carolina Public Service Commission ("**SCPSC**") and the South Carolina Department of Health and Environmental Control ("**SCDHEC**") and any other applicable Governmental Authority. Thereafter, Buyer and Trustee shall use their reasonable best efforts to provide any additional information or data required or requested by any Governmental Authority in order to process and review said applications, petitions, modification requests, requests for approval, notifications, or other documentation

necessary to complete the transactions contemplated herein, and shall provide copies of all such documents to Seller at such time as it is provided to the Governmental Authority.

(c) In connection with its efforts to obtain all Required Approvals, Buyer shall (i) promptly inform Trustee of any communication received by Buyer, its Affiliates or representatives from, or proposed to be given by Buyer, its Affiliates or representatives to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, (ii) permit Trustee a reasonable opportunity to review and comment upon all filings and submissions to any Governmental Authorities or other Persons regarding the transactions contemplated hereby prior to submitting such filings or submissions, and (iii) promptly inform Trustee of the timing and content of any communications with any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, and to the extent permitted by such Governmental Authority or other Person, give Trustee the opportunity to attend and participate in such meetings and conferences.

(d) If any objections are asserted with respect to the transactions contemplated by this Agreement under any Utility & Water Laws or if any objection, intervention, suit or proceeding is instituted or threatened by any Governmental Authority or any private Party challenging any of the transactions contemplated by this Agreement as violative of any Utility & Water Laws, Buyer and Trustee shall use their best efforts to promptly resolve such issues.

Section 7.03 Further Assurances. The Parties shall cooperate and use their respective reasonable best efforts to execute any additional documents necessary to effect the transfer of the Interests in the applicable jurisdictions. In addition, on and after the Closing Date, Trustee and Buyer shall cooperate and use their respective reasonable best efforts to take or cause to be taken all appropriate actions and do, or cause to be done, all things necessary or appropriate to consummate and make effective the transactions contemplated hereby, including the execution of any additional documents or instruments of any kind, the obtaining of consents which may be reasonably necessary or appropriate to carry out any of the provisions hereof and the taking of all such other actions as such Party may reasonably be requested to take by another Party hereto from time to time, consistent with the terms of this Agreement, in order to effectuate the provisions and purposes of this Agreement and the transactions contemplated hereby and thereby. Notwithstanding the foregoing, neither Trustee nor its Seller's Affiliates shall be obligated to make any payments or otherwise pay any consideration to any third party to obtain any applicable consent, waiver or approval.

Section 7.04 Public Announcements. Neither Trustee nor Buyer shall issue any press release or otherwise make any public announcement with respect to this Agreement and the transactions contemplated hereby without the prior consent of the other (which consent shall not be unreasonably withheld, conditioned or delayed), except as may be required by applicable law or stock exchange regulation.

Section 7.05 Distributions. The Parties agree that Trustee shall have the right, at or prior to the Closing, to cause the Melrose Utility Entities to distribute all cash held by the

Melrose Utility Entities to Seller or its Affiliates by one or more cash dividends, repurchase of existing stock and/or other distributions. No adjustment shall be made to the Purchase Price as a result of any such dividends, repurchases or other distributions paid to Seller or its Affiliates, provided, however, Seller shall be responsible for paying all current accounts payable of Melrose Utility Entities and through the date of Closing from said cash except as herein assumed by Buyer. In the event said cash is insufficient to cover, said obligation shall be paid at Closing and credited against the Purchase Price. Trustee shall be responsible for any tax liability of the Melrose Utility Entities or Buyer resulting from cancellation of debt or payment of dividends or distributions prior to Closing. All intercompany debt of the Melrose Utility Entities to the Seller shall be satisfied prior to Closing without tax liabilities to the Buyer or Melrose Utility Entities.

## **ARTICLE VIII TAX MATTERS**

### **Section 8.01 Tax Covenants.**

(a) Trustee, on behalf of Seller, shall file, or cause to be filed, all Federal Tax and Combined Tax returns required to be filed after the Closing Date with respect to MUC for any Pre-Closing Tax Period on or before the date that any such filing is due (taking into account any extension of a required filing date). With respect to any Straddle Period Return, upon the written request of Trustee setting forth in reasonable detail the computation of the amount owed, Buyer shall pay to Seller, no later than ten (10) days prior to the due date for the applicable Return, the amount of Taxes due with respect to such Straddle Period that relate to the period beginning the day after the Closing Date. Buyer's Tax liability for a Straddle Period under the preceding sentence shall be determined on the basis of an interim closing of the books, except for any Taxes imposed on a periodic basis (e.g., property Taxes), which shall be apportioned on a pro rata per diem basis.

(b) Trustee shall include MUC in Seller's ~~its~~ consolidated Federal Tax return, and Trustee shall include the Melrose Utility Entities in any applicable Combined Tax Return, as required by applicable Tax law, through the close of business on the Closing Date.

(c) All transfer, documentary, property, value added, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest and any Taxes imposed by way of withholding) incurred in connection with the transactions contemplated by this Agreement (including any real property transfer Tax and any similar Tax) (collectively, "**Transfer Taxes**") shall be borne and paid by Seller, and Seller will, at its own expense, file all necessary Returns and other documentation with respect to all such Taxes and fees, and, if required by applicable law, Buyer will, and will cause its Affiliates to, join in the execution of any such Returns and other documentation.

### **Section 8.02 Tax Sharing.**

(a) Any and all existing Tax sharing agreements between any Melrose Utility Entity and any member of the Seller Group shall be terminated as of the Closing Date.

After such date neither any of the Melrose Utility Entities, Seller nor any Affiliate of Seller shall have any further rights or liabilities thereunder. This Agreement shall be the sole Tax sharing agreement relating to any Melrose Utility Entity for all Pre-Closing Tax Periods.

Section 8.03 Cooperation on Tax Matters. Buyer and Trustee agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Melrose Utility Entities as is reasonably necessary for the filing of any Return (including any report required pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder), for the preparation for any audit, and for the prosecution or defense of any claim, suit or proceeding relating to any proposed adjustment. Buyer and Trustee agree to retain or cause to be retained all books and records pertinent to the Melrose Utility Entities until the applicable period for assessment under applicable law (giving effect to any and all extensions or waivers) has expired, and to abide by or cause the abidance with all record retention agreements entered into with any Taxing Authority. Buyer and Seller shall cooperate with each other in the conduct of any audit or other proceedings involving any Melrose Utility Entity for any Tax purposes and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 8.03.

## **ARTICLE IX EMPLOYEES**

Section 9.01 Employees and Employee Benefits. Following the Closing, Buyer shall have no responsibility to continue to employ any of the persons who are full-time or part-time employees of any of the Melrose Utility Entities employed immediately prior to the Closing Date, including any such employee who is on short-term disability leave or any approved leave of absence immediately prior to the Closing Date (collectively, the employees described above are referred to as the “**Affected Employees**”).

Section 9.02 No Right of Employment. Nothing contained herein, expressed or implied, is intended to confer upon any Affected Employee any right to continued employment by Buyer, any Melrose Utility Entity or Seller or their respective Affiliates for any period by reason of this Agreement, except as required by applicable law. Nothing contained herein is intended to confer upon any Affected Employee any particular term or condition of employment other than as expressly specified in this Agreement.

## **ARTICLE X CONDITIONS TO CLOSING**

Section 10.01 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction of the following conditions:

- (a) Approval of the Agreement and the within sale and purchase by the United States Bankruptcy Court in the form of an Order by said Court which shall be subject to the reasonable approval of the Buyer.



(b) SCPSC, SCDHEC and all other applicable Governmental Authorities shall have granted the Required Approvals;

(c) Any applicable waiting, notice, or review period (and any extension thereto) under any Utility & Water Laws relating to the transactions contemplated hereby, which by its terms is required to have expired or been terminated prior to the Closing, shall have expired or been terminated; and

(d) No provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the Closing.

Section 10.02 Conditions to Obligation of Buyer. The obligation of Buyer to effect the transactions contemplated by this Agreement shall further be subject to the satisfaction at or prior to the Closing of the following conditions, which are for the benefit of Buyer only and may be waived only by Buyer at or prior to the Closing in its sole discretion:

(a) all representations and warranties of Seller in this Agreement (without taking into account any materiality or Material Adverse Effect qualification therein) shall be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date (except for representations and warranties that speak as of a specific date or time, which shall be true and correct only as of such date or time), except (i) for changes specifically contemplated or permitted by this Agreement, and (ii) where such failure to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect as of the Closing Date;

(b) Trustee has in all material respects performed and complied with all of its covenants, undertakings and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing;

(c) Buyer shall have received the resignations, effective as of the Closing, of each director and officer of the Melrose Utility Entities who will not be a Continuing as an Employee;

(d) Trustee shall have delivered, or caused to be delivered, to Buyer the stock certificates representing the Interests and accompanying stock powers evidencing the transfer of such stock certificates to Buyer or, in the alternative, lost share affidavits; and

(e) Trustee shall have delivered, or caused to be delivered, to Buyer (i) a Certificate of Tax Compliance from the South Carolina Department of Revenue for the Buyer and for each Melrose Utility Entity and (ii) a certificate of existence from the South Carolina Secretary of State for each Melrose Utility Entity.

Section 10.03 Conditions to Obligation of Seller. The obligation of Trustee to effect the transactions contemplated by this Agreement shall be further subject to the satisfaction at or prior to the Closing of the following conditions, which are for the benefit of Trustee only and may be waived only by Trustee at or prior to the Closing in its sole discretion:

(a) Buyer shall have in all material respects performed and complied with all of its respective covenants, undertakings and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing;

(b) Buyer shall have delivered, or caused to be delivered, to Trustee a certificate by the Manager of the Buyer, dated the Closing Date, (i) certifying the effectiveness of any member or manager resolutions of Buyer adopted in connection with this Agreement and transactions contemplated hereby, and (ii) attaching true, correct and complete copies of Buyer's articles of organization and operating agreement.

## **ARTICLE XI SURVIVAL; INDEMNIFICATION**

Section 11.01 Survival. All representations and warranties made in this Agreement shall survive the Closing hereunder through the date of the entry of a Final Decree closing Seller's Chapter 11 bankruptcy case, or, if Seller's bankruptcy case is hereafter converted to a Chapter 7 case, through the date on which a final distribution of funds to creditors is made by the Chapter 7 bankruptcy trustee (such time period, the "**Indemnity Period**"). The Parties intend to shorten the applicable statute(s) of limitations and agree that no claims or causes of action may be brought against Seller, Buyer or any of their respective directors, officers, employees, Affiliates, controlling persons, agents or representatives based upon, directly or indirectly, any of the representations and warranties contained in this Agreement after the Indemnity Period or, except as provided in Section 12.02, any termination of this Agreement. For purposes of this Article XI, the provisions of Section 5.01 shall be treated as a representation and warranty. This Section 11.01 shall not limit any covenant or agreement of the Parties that contemplates performance after the Closing.

## **ARTICLE XII TERMINATION**

Section 12.01 Termination. This Agreement may be terminated at any time at or prior to the Closing by:

(a) mutual written consent of Trustee and Buyer;

(b) either the Trustee or Buyer, upon written notice to the other, if the Closing shall not have occurred by December 31, 2009 (the "**Termination Date**") provided, however, Buyer may extend the Closing Date up to sixty (60) days if and only if the conditions set forth in Section 10.01 (a), (b), and (c) have not been accomplished.

(c) either Trustee or Buyer, upon written notice to the other, if any court of competent jurisdiction or other competent Governmental Authority shall have issued a statute, rule, regulation, order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such statute, rule, regulation, order, decree or injunction or other action shall have become final and non-appealable, unless the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of

the Party seeking to terminate this Agreement to have fulfilled any of its obligations under Sections 7.01 and 7.02;

Section 12.02 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 12.01 hereof, (i) this Agreement (except for Section 6.01, this Section 12.02 and Article XIII and Seller's obligation to reimburse Buyer for Restoration Costs and Management Fees under Section 2.02) shall forthwith become void and have no effect, without any liability on the part of any Party hereto or its Affiliates.

### **ARTICLE XIII MISCELLANEOUS**

#### **Section 13.01 Remedies.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING ARTICLE XI, IN NO EVENT SHALL BUYER OR SELLER BE LIABLE FOR, OR BEAR ANY OBLIGATION IN RESPECT OF, ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER OR ANY DAMAGES RELATING TO, OR ARISING OUT OF, DIMINUTION IN VALUE, LOST PROFITS, OR LIMITATIONS OR RESTRICTIONS ON BUSINESS PRACTICES.

Section 13.02 Notices. All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission) and shall be given (a) by personal delivery to the appropriate address as set forth below (or at such other address for the Party as shall have been previously specified in writing to the other Party), (b) by reliable overnight courier service (with confirmation) to the appropriate address as set forth below (or at such other address for the Party as shall have been previously specified in writing to the other Party), or (c) by facsimile transmission (with confirmation) to the appropriate facsimile number set forth below (or at such other facsimile number for the Party as shall have been previously specified in writing to the other Party) with follow-up copy by reliable overnight courier service the next Business Day:

if to Buyer, to:  
**CK MATERIALS, LLC**  
Mr. Jamie J. Karabinchak  
10 Liberty Street  
Edison, New Jersey 08837

with a copy to:  
**Charles A. Scarminach, Esquire**  
Novit & Scarminach, P.A.  
The Jade Building, Suite 400  
52 New Orleans Road  
Post Office Drawer 14  
Hilton Head, SC 29938

if to Seller, to:  
**DAUFUSKIE ISLAND PROPERTIES, LLC**  
Robert C. Onorato  
Trustee in Bankruptcy  
3 Carma Court  
Hilton Head Island, SC 29926

With a copy to:  
**Julio E. Mendoza, Jr., Esquire**  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700 (29201)  
P. O. Drawer 2426  
Columbia, SC 29202

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. (Eastern Time) and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day.

Section 13.03 Extensions, Waivers and Amendments. At any time prior to the Closing, each of the Parties hereto may (a) extend the time for the performance of any of the obligations or acts of the other Party hereto, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered pursuant hereto, (c) waive compliance with any of the agreements of the other Party contained herein or (d) waive any condition to its obligations hereunder. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by an authorized officer of each Party.

Section 13.04 Headings. The table of contents and the article, section, paragraph and other headings contained in this Agreement are inserted for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 13.05 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Section 13.06 Entire Agreement. This Agreement, the Exhibits hereto, the Disclosure Schedules hereto, and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede and cancel all prior agreements, negotiations, correspondence, undertakings, understandings and communications of the Parties, oral and written, with respect to the subject matter hereof.

Section 13.07 Governing Law. THIS AGREEMENT, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OR CHOICE OF LAWS OR ANY OTHER LAW THAT WOULD MAKE THE LAWS OF ANY OTHER JURISDICTION OTHER THAN THE STATE OF SOUTH CAROLINA APPLICABLE HERETO.

Section 13.08 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION, CLAIM, SUIT, LITIGATION OR OTHER PROCEEDING BETWEEN THE PARTIES HERETO IN ANY COURT.

Section 13.09 Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Party; provided, however, that this Agreement may be assigned by Buyer without the prior written consent of Seller to any entity affiliated with the Buyer formed to take title of the Stock, such consent not to be unreasonably withheld, to any Affiliate of Buyer.

Section 13.10 Fees and Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each Party shall bear its own fees and expenses incurred in connection with the transactions contemplated by this Agreement, except for Transfer Taxes which shall be paid by Buyer.

Section 13.11 Binding Nature; Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors (whether by operation of law or otherwise) and permitted assigns. Except as set forth in Section 6.06, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person or Persons any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 13.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of this Agreement or of any other term hereof, which shall remain in full force and effect, for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. The Parties hereby acknowledge and agree that the covenants set forth in Section 7.05 are reasonable in scope and in all other respects. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each Party agrees that such restriction may be enforced to the maximum extent permitted by law, and each Party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

Section 13.13 Specific Performance. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

#### Section 13.14 Construction.

(a) Information disclosed in any Disclosure Schedule shall be deemed to be disclosed with respect to such other sections of this Agreement which would reasonably pertain in light of the form and substance of the disclosure made. The inclusion of information in any Disclosure Schedule shall not be construed as an admission or indication (i) that such information is material, that it could have a Material Adverse Effect or that such information is required to be referred to or disclosed in such Disclosure Schedule, or (ii) that any referenced agreement or document is enforceable or currently in effect or that there are any obligations remaining to be performed or any rights that may be exercised under such agreement or document. No information in the Disclosure Schedules relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Matters reflected in the Disclosure Schedules are not necessarily limited to matters required by the Agreement to be reflected in the Disclosure Schedules. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. In no event shall the inclusion of any such matter in the Disclosure Schedules be deemed or interpreted to broaden the Trustee's representations, warranties, covenants or agreements contained in this Agreement. The attachments to the Disclosure Schedules are an integral part of the Disclosure Schedules and are incorporated by reference for all purposes as if set forth fully therein.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

(c) As used in this Agreement, all references to Seller shall refer to Seller solely in connection with the conduct of the Business.

(d) For the purposes hereof, (i) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires, (ii) the words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Disclosure Schedules and the Exhibits attached hereto) and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, and exhibits and schedules of this Agreement unless otherwise specified, (iii) the words "including" and words of similar import when used in this Agreement means "including, without limitation" unless otherwise specified, (iv) the word "or" shall not be exclusive, (v) Buyer, Seller, and/or Trustee will be referred to herein individually as a "Party" and collectively as "Parties" (except where the context otherwise requires), and (vi) the phrase "transactions contemplated by this Agreement" or "transactions contemplated herein" shall include the transactions contemplated by the Exhibits and Disclosure Schedules to this Agreement.

(e) Any reference to any federal, state, local or non-U.S. statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires.

Section 13.15 Schedules and Exhibits. All Schedules and Exhibits hereto, including any attachments, are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Stock Purchase Agreement to be duly executed by their respective authorized officers as of the day and year first written above.


**BUYER:**

**CK MATERIALS, LLC,**  
a South Carolina limited liability company

By:   
Jamie J. Kojabachak  
Its: Manager

**SELLER:**

**DAUFUSKIE ISLAND PROPERTIES, LLC**

By:   
Robert C. Onorato  
Its: Trustee in Bankruptcy  
Case No.: 09-00389  
U.S. Bankruptcy Court  
For District of South Carolina



IN WITNESS WHEREOF, the Parties have caused this Stock Purchase Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

**BUYER:**

**CK MATERIALS, LLC,**  
a South Carolina limited liability company

By:   
**Jamie J. Karabinchak**  
Its: Manager

**SELLER:**

**DAUFUSKIE ISLAND PROPERTIES, LLC**

By: \_\_\_\_\_  
**Robert C. Onorato**  
Its: Trustee in Bankruptcy  
Case No.: 09-00389  
U.S. Bankruptcy Court  
For District of South Carolina

STATE OF SOUTH CAROLINA       )  
                                                  )  
COUNTY OF BEAUFORT            )

**OWNER'S AFFIDAVIT**

- (a) That he is the duly appointed Trustee in Bankruptcy for **Daufuskie Island Properties, LLC**, a South Carolina limited liability company (the “**Company**”), and is authorized and empowered to make and does make this affidavit on behalf of the Company; pursuant to approval of the United States Bankruptcy Court for the District of South Carolina, Case Number: 09-00389, of his appointment as Trustee for the Company, that the averments herein are likewise made as though for and by the Company; that he is informed and believes that the Company is the owner of certain real property lying and being in Beaufort County, South Carolina, a legal description of which is set forth in **Exhibit “A”** attached hereto and made a part hereof;
- (b) That he is informed and believes that there are no parties in possession other than (i) as shown in the public records of Beaufort County, South Carolina, (ii) as may relate to an interest in minerals, or (iii) as shown on a boundary survey (the “**Survey**”) recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, office of the Register of Deeds of Beaufort County, South Carolina;
- (c) That he is informed and believes that there are no disputes concerning the boundaries of said real property except as may be shown on the Survey;
- (d) That he is informed and believes that there has been no violation of any restriction which may have been imposed upon said real property either by a predecessor in title, governmental authority, or any other person whomsoever;
- (e) That he is informed and believes that the Company has made no improvements or repairs to said real property during the three months immediately preceding the date of this affidavit; and that there are no unpaid bills of any nature, including, but not limited to, those that are due for the services of any architects, engineers or surveyors or for labor or materials for any recent work, improvements, or repairs that may have been done to said real property due and owing by the Company;
- (f) That he is informed and believes that there are no liens against said real property for any past due assessments for paving, sidewalk, curbing, sewer or any other street improvements of any kind; and
- (g) That he is informed and believes that there are no suits, judgments, bankruptcies, or executions pending in any court that could in any way affect the title to said real property, or

constitute a lien thereon, and that the Company is not a surety on any bond wherein, through a default of the principal thereof, a lien would be created against said real property.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

By: \_\_\_\_\_

**Robert C. Onorato**

Its: Trustee in Bankruptcy

Case No.: 09-00389

U.S. Bankruptcy Court

For District of South Carolina

Sworn to and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Notary Public [My commission expires] \_\_\_\_\_ (Notary Seal)

**Schedule 3.05(a)**  
**Ownership of Melrose Utility Entities**

**[TO BE PROVIDED BY TRUSTEE AFTER COURT APPROVAL OF AGREEMENT]**

**Schedule 3.13(a)**

**Real Property**

**[TO BE PROVIDED BY TRUSTEE AFTER COURT APPROVAL OF AGREEMENT]**

-

## **EXHIBIT C**



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment*

EXHIBIT

B

7/20/09

**CERTIFIED-RETURN RECEIPT**

7005 1160 0005 0094 4349

June 16, 2009 Original  
July 16, 2009 Resent

Mr. R.C. Onorato  
3 Carma Court  
Hilton Head Island, SC 29926

Concerning violations with:  
Daufuskie Island Properties LLC - Wastewater Permit No. ND0068179  
Melrose Utility Company, Inc. - Water System No. 0750043

Mr. Onorato,

On June 9, 2009 a Wastewater Operations and Maintenance Inspection and a Water Sanitary Survey Follow-Up was conducted for Daufuskie Island Properties, LLC/Melrose Utility Company.

The wastewater treatment facility is being checked daily by certified operators and daily laboratory testing is being conducted. The collection pump stations are being checked weekly. However, there were serious issues relating to the operation of the wastewater treatment and collection systems:

- The monthly sampling on the Discharge Monitoring Report (DMR) and the semi-annual monitoring well data is not being conducted as required by the Land Application Discharge Permit. A letter has been sent to the Department with the monthly DMR data explaining nonpayment to creditors, which includes the contract laboratory you were utilizing: General Environmental Laboratories, as the reason the monthly testing is not being completed. This puts your utility in violation of state and federal regulations.

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Region 8

Serving Beaufort, Colleton, Hampton and Jasper Counties

Beaufort EQC Office • 104 Parker Drive • Burton, SC 29906 • Phone: (843) 846-1030 • Fax: (843) 846-0604 • [www.scdhec.gov](http://www.scdhec.gov)

- There are 24 wastewater collection pump stations in your system. There are 6 out of the 24 pump stations with only one pump that is operational. The locations are:

- Confederate Court
  - Beach Cottage
  - River Road (Bloody Point)
  - Sportsman
  - Masters Court
  - Martin Angel

- The generator at the wastewater treatment facility is inoperable. Reportedly the generator needs wiring.
- Chemicals for the wastewater treatment facility will need to be purchased in July 2009.

The drinking water system is being monitored daily by a certified operator and emergency repairs are being made to the distribution system. Monthly total coliform sampling is being conducted. However, there are drinking water issues that must be addressed:

- The approximately 100 testable backflow prevention devices need testing.
- The fire hydrants need to be flow tested.
- An Emergency Preparedness Plan needs to be properly written for the system.
- A valve and hydrant maintenance program and flushing program needs to be implemented.
- A Consumer Confidence Report (CCR) is due for the 2008 year.
- Drinking water chemicals will need to be purchased in July 2009.

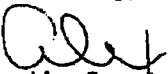


The issues mentioned for the wastewater and drinking water systems were prioritized but not inclusive.

Please respond to this office within five (5) working days with a plan and time frame to bring your utility into compliance.

Please call our office if you have any questions. Our number is 843-846-1030.

Sincerely,



Alex Saunders

[saundeac@dhec.sc.gov](mailto:saundeac@dhec.sc.gov)

Environmental Health Manager III

SCDHEC  
EQC Region 8  
104 Parker Drive  
Burton, SC 29906